

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963.

No. _____

UNITED STATES OF AMERICA,
Appellant,

vs.

THE STATE OF MISSISSIPPI, ET AL.,
Appellees,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI.

**MOTION TO AFFIRM JUDGMENT OF THE
DISTRICT COURT**

Appellees move this Honorable Court to affirm the Judgment entered by the District Court on the 6th day of March, 1964¹, and in support of this motion would show that it is manifest from the record and the opinions of the court below that the questions on which the decision of the cause depend are so insubstantial as not to need further argument.

1. Appendix C, p. 180, Appellant's Jurisdictional Statement.

A clear understanding of the basic matters presented to the three-judge court below taken in conjunction with the review of the opinions of that court can save this court the needless burden of further procedures in this appeal.

The thrust of the complaint was that certain constitutional provisions and statutory laws of the State of Mississippi violated the Constitution of the United States. This suit went far beyond the limits contemplated by 28 U.S.C. 2281, *et seq.*² It did not seek to test the State's Constitutional provisions and laws by way of a suit for an injunction directed against the official charged with the enforcement, instead it made a broadside attack against the intangible State itself, state officials not connected with enforcement, and six individual and unrelated registration officials.

The lower court's decision as to the various categories of defendants may properly be analyzed thus:

The State of Mississippi—The Sovereign State was held to be an improper party, principally to avoid a needless

2. These statutes were omitted from Appellant's Jurisdictional Statement. Section 2281 provides:

"§ 2281. *Injunction against enforcement of State statute; three-judge court required*

"An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title." (Emphasis supplied)

Of course if there was no jurisdiction under these statutes in the court below, there is no jurisdiction in this court on direct appeal.

decision on a substantial question³ as to the constitutionality of the Federal statute, 42 U.S.C. 1971; alleged by the appellant to give federal executive permission for a direct right of action against the State. Both because the State was not enforcing the Constitutional provisions and statutes called in question and because the court determined it would not be appropriate to inject the issue as to the constitutional validity *vel non* of the federal statute in a situation where there were registrars in office subject to suit and injunctive relief, the complaint was held improperly laid as to the State of Mississippi.

The State Board of Election Commissioners—These three defendants have only a minor ministerial function under the statutory scheme of the election laws of the State of Mississippi. They are not enforcement officials. The complaint does not charge them with any discriminatory discharge of their duties, but merely with prescribing such forms as the statutes required for use by others in the actual administration and enforcement of the laws. These defendants were held to be needless and improper parties in the three-judge court proceeding.

The Six County Registrars—No charge of joint conduct or action is made against these, the only actual enforcement officials under Mississippi voting laws. The court therefore ruled that their joinder in one cause of action was not permissible under Rule 20(a). No charge of discriminatory application was made and, in fact, counsel for the appellant, in their oral arguments, insisted that the case intended to be presented was one involving non-dis-

3. See Section V, p. 39, et seq., Judge Cameron's Opinion, Appendix B, Appellant's Jurisdictional Statement, and the cases therein cited, particularly *U. S. v. Alabama*, 362 U.S. 602, and *U. S. v. Adkins*, 323 F.2d 733, which held the constitutional question to be open.

criminary application of laws which in and of themselves were alleged to be unconstitutional. The court dismissed the cause of action as to these defendants both because the sole statutory basis authorizing the United States to maintain the action here, 42 U.S.C. 1971, provided no authority to the United States to attack State statutes on the basis of their constitutionality and because the statutes attacked were constitutional.

Appellant's contentions of substantiality are:

1. The alleged case is important.
2. The Federal executive can attack the constitutionality of a state's entire system of franchise laws under the authority of 42 U.S.C. 1971.
3. The decision conflicts with the three-judge court decision in *U. S. v. Louisiana*, 225 F. Supp. 353.

The short answer to Proposition 1 is that an executive official's determination that he needs or ought to have legislative authority can never operate to vary or amend a legislative grant that does not include that authority, even if the court agrees that it ought to have been granted. The Justice Department's political concept that this suit will enfranchise a half million persons completely ignores the legal fact that the 15th amendment prohibits. It does not confer the franchise on any citizen.

The plain words of 42 U.S.C. 1971 deny efficacy to the second proposition advanced by appellant. This statute by its every term discloses a legislative intention to permit citizens "otherwise qualified by law to vote" to exercise that privilege *without regard to contrary State statutes or constitutional provisions*.⁴ This obviously (a) envisions

4. 42 U.S.C. 1971(a), also note the 2nd paragraph of Subsection (e).

the existence of state franchise laws to provide qualifications and, (b) provides for relief without an attack by the federal government against a coordinate sovereign. This statute cannot be impliedly amended by pointing to cases holding that an individual citizen has a right to seek three-judge injunctive relief from the enforcement of an allegedly unconstitutional statute. Procedurally, the suit is improper. The majority and concurring opinions plainly demonstrate that substantively the claim is also without support. No case cited by appellant or extant in the decisional authorities of this court upholds the right of the United States to bring or maintain this action.

The third ground of substantiality asserted is a conflict between the District Court's ruling here and the holding of the District Court in *United States v. Louisiana, supra*. This opinion and the facts behind it are distinguished in the majority opinion.⁵

5. Section XII, pp. 74-78, Jurisdictional Statement, Appendix B. We particularly call to the court's attention the discussion of the connotation of the word "read" in its ordinary and literal meaning. (Please note the printing error which occurs on pages 76 and 77. The material from the 14th line on page 76 after the word "letters", through and including the hyphenated word "letters" in the 16th and 17th line on page 77 is repetitious.)

For all of the reasons set out in the majority and concurring opinions below and because of the manifest insubstantiality of the questions presented, the judgment of the lower court should be affirmed.

Respectfully submitted,

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